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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,568	01/10/2007	Yoshito Oki	293768US0PCT	8924
22850 7590 06/27/2011 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER WALCK, BRIAN D				
ART UNIT		PAPER NUMBER		
1736				
NOTIFICATION DATE		DELIVERY MODE		
06/27/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/587,568

Applicant(s)

OKI ET AL.

Examiner

Brian Walck

Art Unit

1736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/03/2011 has been entered.

Status of Claims

2. Claims 1-35 are canceled. Claims 36-62 are newly added.

Status of Previous Rejections

3. The previous rejections of the claims have been withdrawn in view of the cancellation of all previously pending claims.

Claim Rejections - 35 USC § 102/103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. **Claims 36-50, 54, 56-62 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 2004-176091 to Kuroda et al (cited by applicant in IDS) in view of the evidentiary references the article titled "Aluminum Alloys" by Lyle et al (cited in previous office action) and the article titled "Aluminum and Aluminum Alloys" by Sanders (cited in previous office action).**

Regarding claim 36, Kuroda discloses several high-strength aluminum alloy fin material for heat exchangers having high comprising a composition falling wholly within the instantly claimed composition, for example alloy 1 (Kuroda, Table 1, alloy 1), which lies wholly within the instantly claimed composition as follows:

Element	Claimed wt%	Kuroda wt%	Lies within?
Si	0.8-1.4	1.0	Yes
Fe	0.15-0.7	0.2	Yes
Mn	1.5-3.0	2.4	Yes
Zn	0.5-2.5	1.5	Yes
Mg	0-0.05	~0	Yes
Cu	0-0.02	~0	Yes
Al	Balance	Balance	Yes

Additionally, Kuroda discloses the fin material has a tensile strength after brazing of 160 MPa.

Although Kuroda does not explicitly disclose the instantly claimed tensile strength before brazing or recrystallized grain size after brazing, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established (see MPEP 2112.01 [R-3].) In the instant case, the

aluminum alloy fin material of Kuroda would be expected to have the same properties or very similar properties to the instantly claimed aluminum alloy fin material because both have the same composition, structure, and purpose. Therefore, a rejection based alternatively on either 35 U.S.C. 102(b) or 35 U.S.C. 103(a) is eminently fair and acceptable.

Regarding claims 37-40, 47, 49, 50, 54, 56, 57, and 60-62, the composition of the fin material of Kuroda falls wholly within the instantly claimed ranges.

Regarding claims 41-44, 48, and 59, although Kuroda does not explicitly disclose the instantly claimed properties, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established (see MPEP 2112.01 [R-3].) In the instant case, the aluminum alloy fin material of Kuroda would be expected to have the same properties or very similar properties to the instantly claimed aluminum alloy fin material because both have the same composition, structure, and purpose. Therefore, a rejection based alternatively on either 35 U.S.C. 102(b) or 35 U.S.C. 103(a) is eminently fair and acceptable.

Regarding claims 45, 46, and 58, Lyle (Lyle, page 12, "3.1.1. Impurities in the Molten Metal" and Table 4) discloses that Cr, Zr, Ti, and V are present in amounts of

0.005-0.02 weight percent in aluminum metal, falling wholly within the instantly claimed ranges.

Claim Rejections - 35 USC § 103

9. Claims 36-50, 54, 56-62 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 2004-176091 to Kuroda et al as applied to claims 36-50, 54, 56-62 above.

Regarding claims 51-53 and 55, Kuroda discloses alloys as above. The specific alloy of Kuroda has a Si content of 1.0 weight percent whereas instant claims 51-53 and 55 recites a Si content of 1.1-1.4 weight percent. A prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties (See MPEP 2144.05 [R-5]). In the instant case, the alloy of Kuroda is close enough to the instantly claimed Si content range that one of ordinary skill in the art would expect them to have the same properties. In the alternative, Kuroda discloses a Si content range of 0.8 to 1.5% Si (Kuroda, abstract). In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists (see MPEP 2144.05 [R-5]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected values for Si that lie within the instantly claimed ranges because Kuroda discloses the same utility throughout the disclosed ranges.

Response to Arguments

10. Applicant's arguments with respect to claims 36-62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 2002-161323 to Shoji (cited by applicant in IDS) discloses aluminum alloy fin-material falling close to the instantly claimed compositions which may constitute a prima facie case of obviousness over the instant claims but has not been applied as 35 USC 103 rejection in accordance with the practice of applying the best prior art and avoiding cumulative rejections in accordance with MPEP 706.02 [R-6] I.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Walck whose telephone number is (571)270-5905. The examiner can normally be reached on Monday-Friday 9 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571)272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stanley Silverman/
Supervisory Patent Examiner, Art
Unit 1736

/Brian Walck/
Examiner, Art Unit 1736